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City Savings Bank & Trust Co. v. Reyburn, 163 Fed. 597. Nor is sufficient value given if a depositor is permitted, merely as a favor, to draw against an item deposited for collection. *Fayette Nat. Bank v. Summers,* 105 Va. 689. If, however, a regular deposit is once drawn upon before notice of defects, the bank's position is not altered by the subsequent restoration of the depositor's credit. *Morrison v. Farmers' & Merchants' Bank,* 9 Okla. 697. These views have been incorporated into the Negotiable Instruments Law, Sections 25 and 191, limited by Section 54. Binding undertakings, although executory, other than for the payment of money, appear to be sufficient value. *Phoenix Insurance Co. v. Church,* 81 N. Y. 226; *Brooklyn, etc. R. Co. v. Nat. Bank of the Republic,* 102 U. S. 25; *Currie et al. v. Misa,* 10 L. R. Exch. Cas. 153. A very scanty number of English and American authorities are in accord with the principal case. *Ex parte Richdale,* 19 Ch. D. 409; *Wheeler v. First Nat. Bank of Battle Creek,* 3 Tex. App. Civ. Cas., Sec. 153.

CARRIERS—LIABILITIES FOR INJURIES—OWNER OF ELEVATOR.—WILMARTH V. PACIFIC MUTUAL LIFE INSURANCE CO. OF CALIFORNIA, 143 PAC. (CAL.) 780.—*Dictum:* The responsibility of the owner of an elevator for injury to a passenger is analogous to that of a common carrier.

That the circumstances surrounding the owner of an elevator and the common carrier are analogous is evident when we consider that the safety and lives of those who avail themselves of either of these means of carriage must of necessity be intrusted in a great measure to the care of those who control and operate the cars. The law, recognizing this analogy, places similar duties upon both.

A common carrier is not an insurer of the safety of its passengers. *Thorson v. Groton and S. St. Ry. Co.,* 85 Conn. 11; *Keeley v. City Electric Ry. Co.,* 133 N. W. (Mich.) 1085. But it is bound to exercise the highest degree of care and diligence which is reasonably practicable under the circumstances. *Colorado Springs and Interurban Ry. Co. v. Allen,* 135 Pac. (Colo.) 790; *Austin v. Washington Water Power Co.,* 123 Pac. (Wash.) 775; *Indianapolis Southern R. Co. v. Tucker,* 98 N. E. (Ind.) 431.

One owning and controlling a building equipped with passenger elevators is not an insurer of the safety of the passengers. *Munsey v. Webb,* 37 App. D. C. 185; *Tippecanoe Loan & Trust Co. v. Jester,* 101 N. E. (Ind.) 915. But he must exercise the highest skill and foresight consistent with the efficient operation of the elevator. *Putnam v. Pacific Monthly Co.,* 136 Pac. (Ore.) 835; *Cubbage v. Estate of Conrad Youngerman,* 134 N. W. (Iowa) 1074; *Howard v. Scarritt Estate Co.,* 161 Mo. App. 552.

The analogy drawn in the dictum of the principal case has been definitely recognized in *Grimmel v. Boyd,* 142 N. W. (Neb.) 893, and in *Helmly v. Savannah Office Building Co.,* 79 S. E. (Ga. App.) 364 (construction of "common carrier" in a statute). (*Seaver v. Bradley,* 179 Mass. 329 is *contra* as to construction of a similar statute.) And this is the prevailing doctrine. *Cooley on Torts* (*Student's Ed.*), 663, and cases cited; *Hutchinson on Carriers,* Vol. 1, page 94, and cases

cited. In New York, Michigan, and Rhode Island, only ordinary or reasonable care is required of elevator owners. *Griffin v. Manice,* 166 N. Y. 188; *Burgess v. Stowe,* 134 Mich. 204, 211; *Edwards v. Manufacturers Bldg. Co.,* 27 R. I. 248.

CARRIERS—PASSENGER'S ACTION FOR INJURIES—BURDEN OF PROOF—RES IPSA LOQUITUR.—STEELE ET UX. V. PACIFIC ELECTRIC RY. CO., 143 PAC. (CAL.) 718.—When the fact is undisputed that an injury has occurred to plaintiff while alighting from a street car, but the circumstances attendant upon that injury are in question, *held,* it is error to charge that, under the doctrine of *res ipsa loquitur,* a presumption arises that defendant was negligent.

"The principle expressed by the formula *res ipsa loquitur*—the thing speaks for itself—is that, where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if proper care be used, it affords reasonable evidence, in the absence of explanation by defendant, that the accident arose from lack of proper care." *Muskogee Electric Traction Co. v. McIntire,* 37 Okla. 684; *McNulty v. Ludwig & Co.,* 153 App. Div. 206; *The Joseph B. Thomas,* 81 Fed. 578.

The instrument doing the damage must be under the control of the defendant or his servants. *Bonham v. Winchester Repeating Arms Co.,* 179 Ill. App. 469.

A presumption of negligence is not raised; that is, evidence sufficient to invoke this principle *may* not be sufficient to justify a directed verdict, in absence of rebuttal by defendant; but it must be presented to the jury and is sufficient to support an inference by the jury that the defendant was negligent. *Zahniser v. Penn. Torpedo Co.,* 190 Pa. St. 350; *Heimberger v. Elliott Frog & Switch Co.,* 165 Ill. App. 316.

Mere proof of injury is not sufficient. The plaintiff must introduce enough evidence concerning surrounding facts to justify jury in finding that those facts raise an inference of negligence on defendant's part. *Burns v. United Rys. Co. of St. Louis,* 158 S. W. (Mo.) 394; *Davis v. Crisham,* 213 Mass. 151.

Then the defendant has the burden of going forward. *Huscher v. New York & Queens Electric Lt. & Power Co.,* 158 App. Div. 422; *Stewart v. Carpet Co.,* 138 N. C. 60. The inference sought to be raised may be rebutted by defendant by disproving in any way the plaintiff's allegations of negligence. *Lellon v. Rawitzer,* 57 Conn. 583; *Bush v. Barnett,* 96 Cal. 202; *Enright v. Chicago City Ry. Co.,* 165 Ill. App. 163. But the burden of proof is not shifted. *Heimberger v. Elliott Frog & Switch Co., supra; Sweeney v. Erving,* 228 U. S. 233. And the plaintiff, who has alleged negligence, must prove it and he must also prove that damage proximately resulted from it. *Riordan v. Chicago City Ry. Co.,* 178 Ill. App. 323; *Wharton v. Warner,* 75 Wash. 470; *Button v. Frink,* 51 Conn. 342.

CONTRACTS—ILLEGALITY—GROUNDS OF RELIEF.—GILCHRIST V. HATCH, 106 N. E. (IND.) 694.—*Held,* although the parties to a transaction have con-